

LAND USE COMMISSION
MEETING MINUTES

November 13, 2009

Leiopapa A Kamehameha
Conference Room 405, 4th Floor
235 S. Beretania St.
Honolulu, Hawai`i

COMMISSIONERS PRESENT: Duane Kanuha
Ransom Piltz
Vladimir Devens (Left at 12:39 p.m.)
Kyle Chock (Left at 11:37 a.m.)
Nicholas Teves, Jr.
Normand Lezy (Arrived at 11:10 a.m.)
Lisa Judge

COMMISSIONERS ABSENT: Thomas Contrades
Reuben Wong

STAFF PRESENT: Orlando Davidson, Executive Officer
Diane Erickson, Deputy Attorney General
Bert Saruwatari, Staff Planner
Robyn Loudermilk, Staff Planner
Riley Hakoda, Acting Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIANS: Walt Mensching Jr.

CALL TO ORDER

Chair Piltz called the meeting to order at 9:40 a.m.

ADOPTION OF MINUTES

Commissioner Devens moved to adopt the November 5, 2009 minutes. Commissioner Chock seconded the motion. The minutes were unanimously approved by voice votes (6-0).

TENTATIVE MEETING SCHEDULE

Executive Officer Davidson stated that the tentative meeting schedule had been distributed in the handout material for the Commissioners. In case of scheduling difficulties or any questions, the Commissioners were advised to contact LUC staff.

There were no questions or comments regarding the tentative meeting schedule.

SP09-403 DEPARTMENT OF ENVIRONMENTAL SERVICES (OAHU)

Chair Piltz stated that this was an action meeting on Docket No. SP09-403-Department of Environmental Services' Motion for Reconsideration.

APPEARANCES

Gary Takeuchi, Esq., represented the Department of Environmental Services, City and County of Honolulu

Jesse Souki, Esq., represented the Department of Environmental Services, City and County of Honolulu

Colleen Hanabusa, Esq. represented the Intervenors (Herself, Maile Shimabukuro and the Ko Olina Community Association)

Maile Shimabukuro

Bryan Yee, Esq., represented State Office of Planning

Abby Mayer-State Office of Planning

PUBLIC WITNESSES

1. Lee Munson

Mr. Munson thanked the Commission for its recent decision on the Special Use Permit and provided his reasons for why the Commission should reject the motion for reconsideration.

There were no questions for Mr. Munson.

2. Hanni Hartmann

Mr. Hartmann presented his reasons why the Commission should not reconsider its decision and explained why he felt that the landfill should be closed.

There were no questions for Mr. Hartmann.

3. Beverly Munson

Ms. Munson provided her reasons why she felt the Commission should not reconsider its decision.

There were no questions for Ms. Munson.

4. Todd Apo

Councilman Apo provided his perspective of why the Commission should not grant the Motion for Reconsideration. Mr. Takeuchi asked if Mr. Apo was appearing in an official capacity as Chair of the City Council. Councilman Apo replied that he was. Discussion ensued regarding the over how the City Council could comply with the Conditions of the Special Permit and what the roles of the City Council and Councilman Apo were in this matter.

There were no other questions for Mr. Apo.

5. Cynthia Rezendes

Ms. Rezendes thanked the Commission for its past actions and provided her reasons for requesting that the Commission deny the motion for reconsideration.

There were no questions for Ms. Rezendes.

6. Kristi West

Ms. West stated that she was an Assistant Professor of Biology with Hawaii Pacific University and described her program's need for a special waste disposal facility. Mr. Takeuchi asked what would happen to her program if it could not dispose of its special waste. Ms. West replied that she would probably need to close her program. Ms. Hanabusa asked if there was anything unique about the Waimanalo Gulch landfill facility or if the need was more for a legal disposal facility to handle her special waste. Ms. West responded that she needed a legal disposal site for her program's special waste.

There were no other questions for Ms. West.

7. Kris Gourlay

Mr. Gourlay stated that he represented a refuse hauling business and described

his business' need for a landfill. Mr. Gourlay requested that the Commission allow reconsideration of the motion.

There were no questions for Mr. Gourlay.

8. Carl Tanaka

Mr. Tanaka described his business' need for a landfill and requested that the Commission allowed reconsideration of the motion. Ms. Hanabusa requested clarification on what Mr. Tanaka's disposal needs were. Mr. Tanaka described his business' waste processing techniques and explained how alternative disposal methods had been sought.

There were no questions for Mr. Tanaka.

Commissioner Judge moved for an executive session to consult with the Commission's attorney, pursuant to section 92-5(a)(4), Hawaii Revised Statutes. Commissioner Devens seconded the motion. The Commission unanimously voted (6-0) for an executive session and recessed at 10:25 a.m. The Commission exited executive session and reconvened at 10:40 a.m.

Chair Piltz noted for the record that the Commission had received a letter from Mayor Mufi Hanneman.

PRESENTATIONS

PETITIONER

Mr. Takeuchi moved to strike Intervenor's in opposition to the Motion for Reconsideration as untimely and argued why the filing should not be admitted. Ms. Hanabusa argued how the proceedings for considering special permits were not clear and provided more leeway jurisdictionally and how the information contained in her filing could alternatively be submitted as argument during the hearing. Discussion ensued and thereafter Commissioner Devens moved to accept Intervenor's filing. Commissioner Kanuha seconded the motion. The Commission unanimously approved (6-0) to accept Intervenor's filing.

Mr. Takeuchi argued the reasoning for the Department of Environmental Services Motion for Reconsideration and noted that there were possible emergency circumstances and certain kinds of waste that required landfill disposal options; and that LUC jurisdictional control limits over City Council actions may have been

overlooked. Mr. Takeuchi also mentioned anticipated difficulties with complying with the timetable established by the Commission.

INTERVENOR

Ms. Hanabusa argued what authority and rulings the Commission should weigh while reviewing Petitioner's Motion for Reconsideration for a Special Permit and recapped the history of the Petitioner's representations before the Commission. Ms. Hanabusa explained the concerns that she felt the Commissioners should consider for denying Petitioner's Motion and provided her perception of what recourse the City should have taken in response to the LUC decision.

There were no questions for Ms. Hanabusa

Chair Piltz noted the arrival of Commissioner Lezy at 11:10 a.m. (There were seven (7) commissioners present.)

REBUTTAL

PETITIONER

Mr. Takeuchi argued how the rules and authority that were cited by the Petitioner applied to these proceedings. Mr. Takeuchi argued that these were specific conditions that were being appealed and that the City was observing the balance of the conditions in the order.

There were no questions for Mr. Takeuchi

INTERVENOR

Ms. Hanabusa argued why the Commission did not have jurisdiction to reconsider this motion and provided her perspective of why the Motion should be denied.

There were no questions for Ms. Hanabusa

OP

Mr. Yee provided public witness testimony on behalf of the State Office of Planning (OP), stated that OP's recommendation was to deny the Motion for Reconsideration and provided the reasoning for this position. Mr. Yee argued how OP perceived that the City did not show what material had not been considered or overlooked by the LUC in making its decision.

There were no questions for OP.

DECISION-MAKING

Commissioner Chock moved to deny the motion for reconsideration. Commissioner Lezy seconded the Motion. Commissioner Chock noted that there was no provision within the LUC rules that allowed for a ruling on a reconsideration of the special use permit. There was no further discussion.

The Commission was polled and unanimously voted to deny the Motion for Reconsideration (7-0).

Commissioner Chock stated that he had to leave the proceedings due to a schedule conflict created by the State furlough days changing. The Commission went into recess at 11:37 a.m. Commissioner Chock departed at this time. There were six (6) Commissioners still in attendance at the meeting, five (5) Commissioners were present when the Commission reconvened at 11:43 a.m. – Commissioner Judge rejoined the proceedings at 11:44 a.m.

A07-777 HAWAIIAN MEMORIAL LIFE PLAN, LTD.

Chair Piltz announced that this was an action meeting on Docket No. A07-777 HAWAIIAN MEMORIAL LIFE PLAN, LLC's Motion for Reconsideration.

APPEARANCES

William W. L. Yuen, Esq., represented Petitioner
Scott Ezer, Planning Consultant for Petitioner
Jay Morford, Petitioner
Jesse Souki, Esq., represented City and County of Honolulu, Department of Planning and Permitting
Mike Watkins, City and County of Honolulu, Department of Planning and Permitting
Bryan Yee, Esq., represented State Office of Planning
Scott Derrickson, State Office of Planning
Grant Yoshimori, Intervenors

PUBLIC WITNESSES

1. Michael Bass

Mr. Bass stated that he represented a couple of religious community groups and described the burial needs of his organizations. Mr. Bass commented that he supported the Motion for Reconsideration.

There were no questions for Mr. Bass.

2. Kauhaneokekaikuiokalani (Kauhane) Lee

Ms. Lee represented a Hawaiian cultural heritage group and provided her reasons for supporting the Motion for Reconsideration.

There were no questions for Ms. Lee.

PRESENTATIONS

PETITIONER

Mr. Yuen argued the reasons why the Commission should grant Petitioner's Motion for Reconsideration.

There were no questions for Mr. Yuen.

CITY AND COUNTY OF HONOLULU

Mr. Souki argued the reasons why the City and County opposed Petitioner's Motion for Reconsideration. Commissioner Judge requested clarification on how the Sustainable Communities Plan process would have been short-circuited if the LUC had granted a DBA. Mr. Souki provided his understanding of the community plan process and explained how a district boundary amendment would need to include a condition requiring it to be compliant with the community plan.

There were no further questions for Mr. Souki.

OP

Mr. Yee argued that it did not appear that the LUC had misunderstood or overlooked information that was presented before it and noted that some of the information presented by Petitioner at this hearing was not presented during final argument.

There were no questions for Mr. Yee.

INTERVENOR

Mr. Yoshimori argued the reasons why the Commission should deny the Motion for Reconsideration.

There were no questions for Mr. Yoshimori.

The Commission went into recess at 12:35 p.m. and reconvened at 12:38 p.m.

DECISION-MAKING

Commissioner Devens commented on the standards for reconsideration and moved to deny the Motion for Reconsideration. Commissioner Lezy seconded the motion.

Commissioner Judge stated that she would be abstaining from the voting since she had not been present during the deliberations and decision-making this Docket. There was no further discussion.

The Commission was polled as follows:

Ayes: Commissioners Devens, Lezy, Teves, Kanuha and Piltz.

Nays: None

Abstention: Commissioner Judge

The motion passed 5-0-1 (3 excused).

The Commission went into recess at 12:39 p.m. and reconvened at 12:51 p.m. Commissioner Devens departed the proceedings during the recess. There were five (5) remaining Commissioners.

SP73-959 NANI MAU, INC.

Chair Piltz announced that this was an action meeting to consider a tenth amendment to the State Land Use Commission Special Permit to allow for the conversion of a maintenance building and a former salon into a Charter School Facility on approximately 23 acres of land in the State Agriculture District at Waiakea, South Hilo, Hawaii. Tax Map Key 2-2-48: portion of 13.

APPEARANCES

Ken Fujiyama, CEO Nani Mau, Inc., Petitioner
John Thatcher, Connections Charter School
Gerald Takase, Esq., Deputy Corporate Counsel, County of Hawaii
Norman Hayashi, County of Hawaii
Bryan Yee, Esq., represented OP

PUBLIC WITNESSES

There were no public witnesses; however, written public testimony was submitted to the Commission.

Ms. Loudermilk, LUC Staff Planner, provided a report and map orientation.

PETITIONER

Mr. Fujiyama provided a background and history of the Special Permit Area and the Charter School and explained how the Petition had been filed to update the permit. Commissioner Judge inquired how long the Charter School had been in operation. Mr. Fujiyama replied that the school had been open on the special permit area for about five years. Chair Piltz asked if any county fines had been imposed on the special permit. Mr. Fujiyama responded that an inspector had made a visit but no fines had been imposed. Commissioner Judge asked if the Petitioner was aware of the email correspondence that had been submitted on the proposed tenth amendment to the special permit. Mr. Fujiyama replied that he was not and was provided a copy of the correspondence to review.

Chair Piltz asked if Mr. Fujiyama had any comments on the correspondence. Mr. Fujiyama responded that he knew the people who submitted the emails and explained the proximity of his property in relation to theirs. Commissioner Judge asked if Mr. Fujiyama was aware of the concerns of his neighbors. Mr. Fujiyama replied that he was not aware that his neighbors had the issues stated in their correspondence and indicated that he would talk to them.

Commissioner Judge requested clarification of how the Charter School would operate its two campuses. Mr. Thatcher explained how Connections Charter School intended to conduct its operations. Commissioner Kanuha requested clarification on how buses provided transportation for the school and the impact of traffic in the area. Mr. Thatcher provided the details of how the buses supported the facility and how the school took care of its students.

There were no further questions for Mr. Fujiyama or Mr. Thatcher.

HAWAII COUNTY

Mr. Takase stated that the Windward Planning Commission had met on this matter and had a favorable recommendation for this amendment to the special permit. Mr. Takase acknowledged that there had been no opposition to this request and that there were no outstanding problems in regards to the school's operation. Mr. Takase noted that the County had been trying to get Mr. Fujiyama to gain compliance with the permit and supported this application.

Commissioner Kanuha requested clarification on the zoning for the property. Mr. Hayashi explained how he perceived the County would deal with current and future zoning of the Petition Area. Commissioner Judge requested clarification on how long it would take the Petitioner to come into compliance with the issues of water and public works. Mr. Hayashi described the reasons why the permit had taken so long to process and provided the current status of Petitioner's compliance with County requirements.

Commissioner Judge questioned whether a district boundary amendment might be more appropriate for this situation than a special permit. Mr. Hayashi provided his understanding of why a special permit was suitable. Chair Piltz inquired when the next General Plan was due. Mr. Hayashi responded that the General Plan had been amended in 2005 and a draft was due for 2015 for the County Council, and had gone through two General Plan amendments.

Commissioner Kanuha requested clarification of the location map submitted by the Office of Planning. Mr. Hayashi described the changes that had occurred in the mapped area.

There were no other questions for Mr. Hayashi.

OP

Mr. Yee provided public testimony on behalf of OP, stated that OP had no comments on the proposed amendment, and provided his perception of how OP might determine Special Use Permit and District Boundary Amendments designation in the future.

There were no questions for Mr. Yee.

DECISION-MAKING

Commissioner Kanuha stated that he lived in the Petition Area, described his familiarity with the project's circumstances; and moved to approve the amendment. Commissioner Teves seconded the motion.

Commissioner Judge commented on the Condition 10 reference of County and noted that the reference should be to the Planning Commission of the County of Hawaii and not Maui. Commissioner Kanuha asked if the Petitioner would have any problems with reminding the parents about road usage. Mr. Fujiyama replied that he did not. Commissioner Kanuha amended his motion to include the condition recommended by staff that reads "that the applicant and the Charter School operator shall periodically remind parents and staff to use Railroad Avenue rather than State Route 11-Hawaii Belt Highway for access to Makaiwa Street". Commissioner Teves re-seconded his motion.

There was no further discussion.

The Commission was polled as follows:

Ayes: Commissioners Kanuha, Teves, Lezy, Judge and Piltz

Nays: none

The motion passed 5-0 with 4 excused.

There being no further business, the Commission adjourned at 1:28 p.m.